

Chairman Gene Bavis called the regular meeting of the Planning Board to order at 7:32 P.M. Planning Board Members present were Gene Bavis, Elaine Leasure Rick Johnson, Deb Amsler, Karel Ambroz and Marlene Hall. Also present was Phil Williamson, Code Enforcement Officer, Norm Druschel, Building Inspector, Brendan Bystrak, Town Engineer (LaBella Associates) and Donald Young, Town Attorney (Boylan Code).

Elaine Leasure made a motion, seconded by Karel Ambroz to accept the minutes of May 11, 2015 as presented. Motion carried.

Karel Ambroz made a motion, seconded by Elaine Leasure to dispense with the formal reading of the legal notice. Motion carried.

1. Application of Dennis Gifford & Janet Zimmer (Hillside Equestrian) located at 1624 Route 441 to subdivide 42 acres from a total of approximately 62.56 acres. Property is zoned: R – Residential.

Dennis Gifford and Janet Zimmer Gifford owners of 67 acres at 1624 Walworth-Penfield Road were present. The Gifford's operate Hillside Equestrian at the property. They previously appeared before the Planning Board at the April 13, 2015 meeting to discuss the subdivision and the Board members were agreeable to the concept. The Board was in receipt of a subdivision map entitled "Zimmer Subdivision", prepared by The DDS Companies, 45 Hendrix Road, West Henrietta, NY 14568, dated April 9, 2015. The subdivision involves the subdivision of the existing 67.9 acre parcel into two lots in the "R" Residential Zoning District. The applicant will retain ownership of the 25.87 acre parcel containing the home and barns and will continue to operate Hillside Equestrian. The remaining 42.024 acres with 250 ft. of road frontage will be sold as vacant land.

The application was sent to the County for review and in a letter dated April 30, 2015 it was stated, "At its regular meeting on April 29, 2015, the Wayne County Planning Board reviewed the above mentioned referral and determined it to have no intermunicipal or countywide impact and recommended this referral to returned to the Town to be handled as a local matter."

Brendan Bystrak, Town Engineer reviewed the application and subdivision map and all matters were addressed to his satisfaction (review letter dated May 11, 2015 in Planning Board f

Chairman Bavis opened the public hearing.

There were no comments from the public.

Rick Johnson made a motion, seconded by Deb Amsler to close the public hearing. Motion carried.

Rick Johnson moved adoption of the following resolution; board member Deb Amsler seconded the motion:

**SEQR RESOLUTION – NEGATIVE DECLARATION
ZIMMER SUBDIVISION – 1624 WALWORTH-PENFIELD ROAD**

RESOLVED, that in accordance with the New York State Environmental Quality Review regulations (SEQR), the Planning Board of the Town of Walworth announces its intent to serve a Lead Agency to conduct an environmental review under Section 617.7 of the New York State Codes, Rules and Regulations (NYSSCRR) of the proposed action to subdivide the property at 1624 Walworth Penfield Road into two lots.

FURTHER RESOLVED, that the Planning Board has determine that the proposed action is an "Unlisted Action" as defined under SEQR.

FURTHER RESOLVED, that the Planning Board, in its capacity of Lead Agency, has caused to be prepared an environmental assessment of the significance of potential environmental impacts associated with the above-listed action. The Planning Board declares that, based on the environmental assessment which has been prepared, the action will result in no major impacts, nor cause significant damage to the environment, and the preparation of an Environmental Impact Statement is no warranted. A Negative Declaration under SEQR is therefore issued for this project.

Roll Vote:	Gene Bavis	Aye
	Rick Johnson	Aye
	Elaine Leasure	Aye
	Deb Amsler	Aye
	Karel Ambroz	Aye

Motion carried.

Rick Johnson made a motion, seconded by Elaine Leasure to approve the subdivision of land at 1624 Route 441 as presented.

Roll Vote:	Gene Bavis	Aye
	Rick Johnson	Aye
	Elaine Leasure	Aye
	Deb Amsler	Aye
	Karel Ambroz	Aye

Motion carried.

2. Modification of the Application for 3655 High Street, LLC for Preliminary Site Plan Approval and Special Use Permit for a three building senior housing development, with a total of 51 senior residential units. Property is zoned: Hamlet District: Multi-family/ Neighborhood Business. (Public Hearing).

(Chairman Bavis recused himself as he own adjoining property and Elaine Leasure, Vice-Chair of the Planning Board took over this portion of the meeting. Marlene Hall, alternate joined the others to complete the five member board.)

Betsy Brugg, Woods Oviatt Gilman LLP, attorney for the developer updated the Board about the project to construction a three building senior housing development restricted to age 55 and over. She explained that an environmental review of the project was completed and negative declaration declared on May 11, 2015. The Zoning Board of Appeals granted a variance on June 1, 2015 in regards to the maximum number of units on the property, permitting a total of 51 units to be built in two phases.

Betsy Brugg said that there have been numerous changes to the original plan based on comments and input for the Board and public over the past few months and the developer is confident that the revised proposal is a positive addition to the community. The scale, mass and architecture proposed is consistent with the neighborhood surroundings. The parcel is situated in the Hamlet District and meets zoning requirements and is a permitted use for multi-family dwellings.

Brendan Bystrak, Town Engineer reviewed the site plan and based on his comments, John Shields III, PE submitted a revised drawing. The divided site access island from High Street has been removed to meet NYS Fire Code that requires a 20 ft. wide unobstructed access. A slight modification in the parking layout and moving of several handicap parking spaces was required. Brendan Bystrak said that these changes will not have any significant impact on the site design and he would support a conditioned approval on satisfaction of the Town Engineer and Town staff comments, approval from the NYSDOH and WCSWA for the water service and backflow prevention. Revision to the sanitary sewer will require approval from sewer and highway departments.

Vice-chair Leasure asked if the Planning Board had any questions of concerns.

Karel Ambroz asked if there would be a Knox-Box system to allow easy access to the buildings in the event of a fire. Norm Druschel said he would make sure that all NYS Fire Codes are complied with prior to issuance of a building permit.

Vice-chair Leasure asked what percentage of Buildings A and B would need to be rented prior to construction of Building C. Betsy Brugg said approximately 80% leased.

Elaine Leasure read a letter from the Wayne County Planning Board dated May 28, 2015 that read:

At its regular meeting on May 27, 2015, the Wayne County Planning Board reviewed the above reference referral and recommended approval of the Area Variance, Special Permit and Preliminary/Final Site Plan with following comments:

- The hardship criteria that are required to grant the area variance must be substantiated at the local level,
- The building/site should be developed in a manner that helps it remain compatible with surrounding land uses (particularly adjacent residential uses) and also aesthetically pleasing through use of items such a building design/material fencing, berms, landscaping, etc.,
- Any/all necessary local, state and federal (e.g. NYS Department of Environmental Conservation-Stormwater Management and Erosion and Sediment Control Plans, NYS Department of Health) approvals/permits/recommendations must be followed/obtained,

- All proposed development must meet NYS Uniform Fire Prevention and Building Codes and
- Local emergency service providers (e.g. police, fire and ambulance) should review final plans to ensure that proposed development can be accessed and served.

Vice-chair Leasure made note that the developer has agreed to work with the Walworth Historical Society on a name for the apartments (there will be a contest). The names "Walworth Village Apartments" will most likely be changed at a future date.

Vice-chair Leasure asked for a motion for approval of the Site Plan and Special Use Permit relating to the Project.

Karel Ambroz made the following motion, seconded by Deb Amsler:

Resolution for the Approval of a Site Plan and a Special Use Permit Relating to a Senior Housing Development at 3655 High Street, Walworth, NY Commonly Referred to as Walworth Village Apartments (name to be changed at a later date)

WHEREAS, 3655 High Street, LLC (the "Applicant") has submitted application to the Walworth Planning Board which now seek Site Plan approval and a Special Use permit relating to the construction of three buildings at 3755 High Street (the Property") comprising 51 age restricted senior housing residential units (the "Project") as more fully detailed in the Applicant's Letter of Intent dated March 20, 2015, written by Woods Oviatt Gilman, LLP, on file with the Town Clerk; and

WHEREAS, as lead agency for SEQR purposes, the Walworth Planning Board duly completed an environmental review of the Project and issued a negative declaration on May 11, 2015; and

WHEREAS on June 1, 2015, the Walworth Zoning Board of Appeals granted to the Applicant a variance relation to the maximum number of units permitted at the Property, permitting a total of 51 units; and

WHEREAS, in relation to the Site Plan application, the Walworth Planning Board has carefully considered all relevant documentary, testimonial, and other evidence submitted, including but not limited to the Site Plan Application, Letter of Intent, plans and reports, and other materials, information submitted by the Applicant, information submitted by the Town's consultants, including its Engineers, correspondence and oral testimony from public Town residents, and other state and local agencies, as well as other relevant information, and makes the following findings in relation thereto:

- The proposed development would result in a marked improvement over existing conditions at the Property, creating a new, modern residential development which would replace a long-abandoned, dilapidated and dangerous site;
- The proposed use appears to be consistent with the Town's plans, including the uses with the Hamlet District;
- The proposed use, being residential in nature, appears to be consistent with the character of the neighborhood which is predominantly residential in nature;
- Upon advice from the Town Engineer, the Project appears to have adequate parking, proper drainage systems, property lighting, proper access and circulation relating to future tenants and emergency vehicles, sufficient and proper provision relating to sanitation and public utilities
- The Project has been designed such that it comprises three smaller building, as opposed to one larger building, to better fit the scale of the neighborhood; and
- The Project complies with all landscaping requirements.

WHEREAS, in relation to the Special Use Permit application, the Walworth Planning Board has carefully considered all relevant documentary testimonial, the other evidence submitted, including but not limited to the Special Use Permit Application, Letter of Intent, plans and reports, and other materials and information submitted by the Applicant, information submitted by the Town's consultants, including its Engineers, correspondence and oral testimony from the public, Town residents, various State, County and local agencies, and other information, the Planning Board makes the following findings:

- Harmony: The Project is residential in nature, consistent with the neighborhood. It has been designed as three small buildings, as opposed to one larger building, to keep consistent with scale of surrounding buildings. Further, consistent with surrounding buildings, the height of the proposed structures is two stories. This Property is the site of a former multi-unit apartment building, not restricted to seniors.

The Project enhances the neighborhood by providing a high quality Project on a site which, for many years, has been abandoned, dilapidated and dangerous.

- Public Health, Safety and Welfare: The Project will result in eliminating the current abandoned, depilated and dangerous state of the Property and replacing it with a development that is consistent with the neighborhood, improving the health, safety and welfare of the neighborhood. As set forth in the accompanying traffic study and SEQR documents, there will be no significant adverse traffic impact. The Town Engineer has provided that the technical aspect of the Project are code compliant and property. Furthermore, the SEQR analysis provides that there will be no adverse impact relating to, for example, drainage, parking, lighting, etc. The Project will address a need for quality housing for the senior community.

NOW, THEREFORE, BE IT, RESOLVED, that in consideration of the aforementioned findings, the Walworth Planning Board hereby approves the proposed Site Plan Application; and be it further

RESOLVED, that the Walworth Planning Board has considered each of the crieteria for the granting of the requested special use permit as set forth herein, and based upon the aforementioned findings, hereby approves the Applicant's Special Use Permit Application; and be it further

RESOLVED, that said approvals are hereby conditioned upon, as offered by the Applicant, the filing by the Applicant of a restrictive covenant against the Property, relating to the Project, specifying that tenants of the Project shall be limited to seniors only, seniors being those individuals of the age of 55 or older; and be it further

RESOLVED, that said approvals are hereby conditioned upon satisfaction of the Town Engineer and Town Staff comments, and be it further

RESOLVED, that any and all approvals/permits/recommendation from the New York State Department of Health and Wayne County Water and Sewer Authority are obtained/followed, and be it further

RESOLVED, that any and all revision to the sanitary sewer will require approval from the Walworth Sewer Department and Walworth Highway Department, and be it further

RESOLVED, after reviewing the Site Plan the Town of Walworth Planning Board has determined that a suitable park or parks of adequate size cannot be properly located in any such Site Plan and is otherwise not practical. Therefore, a payment to the Town (the Section 180-58 paragraph E (13)) shall be assessed at the time of issuance of a building permit. Said sum shall, be used by the Town exclusively for neighborhood parks, playgrounds or other recreational purposed including the acquisition of property.

Roll Vote:	Rick Johnson	Aye
	Elaine Leasure	Aye
	Marlene Hall	Aye
	Deb Amsler	Aye
	Karel Ambroz	Aye

Motion carried.

3. Application of Troy Dobbertin of 3809 Stalker Road Major Category B to operate a landscaping and snow plowing business on the premises. Property is zoned R – Residential.

(Chairman Gene Bavis returned to chair the remainder of the meeting).

Troy Dobbertin was present to answer questions from the Board. Chairperson Bavis asked Mr. Dobbertin if it was correct that he was leasing approximately four acres of land from his neighbor to the north to comply with the five acre minimum requirement to operate a Home Occupation Major, Category B. Mr. Dobbertin said that it was correct and that the leased portion was 830 feet of road frontage and 210 ft. deep. Chairman Bavis said that he had received an e-mail and aerial photo from the Town Engineer indicating that a portion of the leased property was in Federal Wetlands and recommended that wetland delineation should be conducted prior to any Board action to determine potential impacts. Bavis said that this was a concern as Dobbertin would not be able to operate within the wetlands.

Rick Johnson said that he had reviewed the application and related documents and said that it appeared to him that the operation should no longer be considered a Home Occupation, but rather a Business as there were now 8 to 10 employees that were parking their vehicles on the premises. Mr. Dobbertin said that the employees simply park their vehicles in the morning, pick up equipment and leave. The landscaping equipment is stored under surveillance behind the garage. Chairman Bavis said he observed that the cars are parked along the driveway and a couple on the leased property and asked Mr. Dobbertin if the parking situation would remain the same and if he would continue to store the equipment behind the garage? Mr. Dobbertin said that yes he would like to.

Chairman Bavis asked the attorney his interpretation of Home Occupation, Major – Category B(1)d: does not employ more than one person on the premises who does not reside on the premises. Bavis questioned whether employees that park, pick up equipment and drive away would be considered “employed on the premises” or is that permitted? Don Lewis responded that there certainly is a difference between seven employees and one employee, but said that the code does not specifically define “working on the premises”. The Board needs to consider the nature of what is being done on the premises and the length of time that employees are there and the intent of the code.

Deb Amsler said that it appeared that storage of equipment and employee parking was primarily on the one acre parcel that he owns and asked Mr. Dobbertin what how the four leased acres were being utilized? Mr. Dobbertin said that the firewood pile was there and bricks that are used in his business were stored on the four acres.

Rick Johnson asked if there presently is a signed lease with the neighbor and Dobbertin said there was a signed lease.

Chairman Bavis said that it was his understanding that the business is lawn mowing, landscaping and snowplowing and asked about the firewood. Dobbertin said that he cuts down trees off site and brings most of the wood to the Town dumps to get rid of it. The good wood he uses for his own personal use for heat in the winter. Bavis asked if he sells any of the wood and he said none. When asked how much wood he cuts, he responded 20 to 50 face cord, depending on the year.

Rick Johnson questioned the yellow page listing of DiSantis Construction and whether it operates out of the 3809 Stalker address? Dobbertin said that DiSantis was the previous owner of the property and the business and telephone number has nothing to do with him and never has.

Deb Amsler said her biggest concern is that leasing the four acres does not really solve the problem. All the storage of equipment, parking and activity is primarily crammed on the one acre that Mr. Dobbertin owns. The woodpile is also close to the neighbors and not on the far side of the 4 acre parcel where the impact would be less.

Chairman Bavis opened the public hearing.

Ron Defoe of 3806 Springwater Lane

Ron Defoe read the following letter:

June 5, 2015

Dear Planning Board:

We are writing you in order to convey our concern related to the Application for Home Occupation Major Category B Permit submitted by Troy Dobbertin, 3809 Stalker Rod. This permit is up for Planning Boar review on June 8, 2015.

Our concerns are related to issues of non-compliance of the Application and Site Plan to the Town of Walworth Zoning Code and their negative impacts on the health, safety, natural beauty and quiet character of our residential neighborhood.

We all live directly adjacent to Mr. Dobbertin's business operations, and while we're happy to have Mr. Dobbertin as a member of our community, we feel strongly that his business has become much too extensive and disharmonious with the neighborhood. We also feel Mr. Dobbertin's business operation should be relocated to a more suitable zoning district in order to preserve the neighborhood's value and character.

We the undersigned respectfully request that you consider the points raised here and in the Community Letter of Opposition that was submitted to you on June 4th by Mr. Defoe as representing our collective position when making your decision on this matter.

Sincerely,

Chuck & Pam Nussbaumer, 3806 Springwater Lane, Walworth, NY 14568
Joe and Cass Kozan, 3800 Springwater Lane, Walworth, NY 14568
Ron & Sally Defoe, 2812 Springwater Lane, Walworth, NY 14568

The Board was in receipt of a letter (with attachments) to the Planning Board dated, June 3, 2015 that voiced his opposition to an Application for a Home Occupation Major Category B Permit submitted by Troy Dobbertin (in Planning Board file).

Mr. Defoe addressed some of the concerns in the letter.

He took issue that Mr. Dobbertin was in compliance with Town Code Section §180.43.1(A)(1) Home Occupation, Major (Category B) that reads:

“An occupation, business or profession, permitted herein, which is carried on wholly with a dwelling unit or in a building or other structure accessory to the dwelling unit on the premises that is a minimum five acres of contiguous land and which said occupation, business or profession is clearly secondary to the use of the dwelling unit,”

The 3809 Stalker Road lot size is 1.08 acres. Mr. Dobbertin said that he did not believe that the intent of the code was to allow leasing of a contiguous parcel in order to comply with the five acre minimum requirement. To support his claim he referred to Town Code Section §180-21(F) which states. “Permitted accessory uses may be located on a contiguous parcel provided the owner of record is also the owner of the parcel having the principal use.”

Mr. Dobbertin also said that utilization of the four acre parcel, primarily to store firewood and bricks would not make much of a difference, as the equipment and parking and associated activity would still be concentrated behind the house.

Mr. Dobbertin has 8 to 10 employees that do not reside on the premises. The employees arrive each morning and create noise and commotion as they load and unload trucks and equipment. The morning activity is particularly disruptive between the hours of 7:30 and 9:00 a.m. as the employee begin their work day. There is also a considerable amount of dust from the Silica based stone driveway and gasoline fumes.

Mr. Defoe said the pile of wood is enormous and questioned if all of it was all for personal use. A recording of the noise produced by the woodcutting operation was played for the Planning Board members.

Mr. Defoe said that he is most concerned that the current usage does not preserve and maintain the residential character of the neighborhood but rather is so extensive it predominates the residential use and is not in keeping with Town Code Section 180-43.1B Intent. The large quantity of commercial vehicles, equipment and employee vehicles creates an extremely negative visual impact that is out of character with the other neighborhood properties of woodland views and manicured lawns. He expressed that any amount of screening or buffering would have little impact because of the elevation of the neighboring properties and lack of leaf cover during part of the year. Screening would have little impact on the noise level. The negative effect of the business on property values was mentioned.

Mr. Defoe said that the property is an attractive nuisance to trespassing children who many wander onto the property as there is no fencing. Also, there are large volumes of combustibles (gasoline) on the property in and around the vehicles. These safety issues he finds unsettling.

Chuck Nussbaumer - 3806 Springwater Lane

Mr. Nussbaumer said that he agrees with Ron Defoe. He moved into his house ten years ago and has noticed a steady increase in the intensity of use of the landscaping business. He expressed concern about the firewood and noise. He is the only one of the neighbors behind the property that does not have a stockade fence and feels he shouldn't have to put one up.

There were no further comments from the public.

Chairman Bavis said that he had concerns that the landscaping business is too extensive to comply with a Home Occupation type business.

Chairman Bavis read the following letter from the Wayne County Planning Board, dated May 28, 2015:

At its regular meeting on May 27, 2015, the Wayne County Planning Board reviewed the above referenced referral and recommended disapproval of the "Home Occupation, Major – Category B" application based on there being a lack of information. The Board was unable to accurately assess the scope of the business (e.g. quantity/type of equipment stored outdoors, on-site processing taking place?, maintenance done on-site, any employees?) given the sketch plan that was provided with the permit application. The applicant did not attend the meeting and the board was therefore unable to have a dialogue that would help them consider the "compatibility of various land uses with one another" and "protection of community character in regards to predominant land uses, population density, and the relation between residential and nonresidential acres".

Chairman Bavis stated that since the Wayne County Planning Board recommended denial of the Home Occupation, Major – Category B, the Planning Board would require a Super Majority (four out of five members would need to vote for approval).

Karel Ambroz said that he was pleased for the applicant that his business is doing so well, but he too has concerns. He said that he felt that Mr. Dobbertin has outgrown his business and it no longer complies with the requirements for a Home Occupation, Major – Category B.

Elaine Leasure commented that she could not recommend approval the way the business is today. She questioned is there anything you could do to the 4 acres to mitigate concerns of the neighbors?

Rick Johnson also said that he was concerned about the scope of the business, especially the concentration of most of the activity on only one acre directly behind the house. Therefore, could not support this project at all.

Discussion ensued as to whether to table the application for another month to allow the applicant the opportunity to revise the application, or make the decision immediately to approve or deny the granting of the Home Occupation, Major – Category B. The Board felt that the fact that the entire four acres of leased land would not be useable because of the wetlands was also a factor to be considered. After discussion, Karel Ambroz stated that any mitigation would not be a permanent fix; therefore, he could not support the option of tabling the application until the next meeting.

Karel Ambroz made a motion, seconded by Elaine Leasure to deny the granting of a Home Occupation, Major – Category B to operate a landscaping and snowplowing business on the premises.

Roll Vote:	Gene Bavis	Aye
	Rick Johnson	Aye
	Elaine Leasure	Aye
	Deb Amsler	Aye
	Karel Ambroz	Aye

Motion carried.

Mr. Dobbertin asked how soon he needed move his business elsewhere. Phil Williamson said he would meet with the Town Attorney to discuss a reasonable time frame.

Chairman Bavis said that he could not prohibit the applicant from reapplying for another Home Occupation in the future, but unless there were very significant changes made, he would not support it.

Chairman Bavis adjourned the meeting at 9:00 p.m.

Gail Rutkowski, Clerk

